IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 344 OF 1996

The State of Maharashtra .. Appellant

Vs.

1. Shankar Babgonda Patil
26 yrs. Occ. Service,
R/o Kabnur, Tal.Hatkanangale
District - Kolhapur.

2. Umesh Balgonda Patil
22 yrs. Occ. Service,
R/o. Kabnur, Tal. Hatkanangale
Dist. Kolhapur. .. Respondents
(Org. Accused)

Mr. A.S. Shitole, APP for Appellant-State.
Ms. D.M. Shah, Advocate appointed for Respondents-accused.

CORAM: S.S. PARKAR & ANOOP V. MOHTA,JJ.

Date : September 02, 2005.

ORAL JUDGMENT (PER S.S. PARKAR,J.):

1. This appeal has been filed by the State against the Judgment and Order dated 31/1/1996 delivered by the Additional Sessions Judge, Kolhapur acquitting the respondents of the offence under Section 302 read with Sections 34 of IPC in Sessions Case No.11 of 1995.

2. The incident had taken place on the night of 23/3/1994 near the house of deceased Ramesh. Deceased was working in Nav Maharashtra Spinning Mill at Sajani near Satgonda Mala at Kabnur. On the night of the incident the deceased took his dinner along with the relative one Mhadgonda Patil at about 8 O'clock. Thereafter his uncle Shamrao had taken meal. The deceased along with his uncle Shamrao, the guest from Merwad and another guest Ajit Patil went to sleep in front of the house of his uncle Shamrao in the courtyard. The wife of the deceased Suvarna, her sister Sunita and their grandmother went to sleep inside the house. At about 3.30 a.m. their uncle gave call to grandmother to open the door. When the door was opened, they were told that deceased Ramesh was assaulted. He was found injured on his nose and right ear from where the blood was oozing out. One stone with blood stains was lying near him. Ramesh had become unconscious but still breathing. He was immediately removed to the KEM Hospital at Ichalkaranji at about 4.25 a.m. After giving some treatment to him there, he was removed to Mission Hospital at Miraj, where he died. Police had taken

the complaint of Suvarna, the wife of the deceased which is Exh.10. After recording the statements of several witnesses and on the suspicion because of the previous quarrel between the accused no.1 and the deceased, accused were arrested on 30/3/1994. Statements of the witnesses were recorded even after the arrest of the accused persons. After the investigation was over, charge-sheet was filed and the case was committed to the Sessions Court.

3. Before the Sessions Court, charge was framed for offence under Section 302 read with Section 34 of IPC against both the respnodents-accused, to which they pleaded not guilty. On behalf of the prosecution about 12 witnesses have been examined. P.W.1 is Suvarna Ramesh Patil, the wife of the deceased who had lodged the report. P.W.2 is Gulab Dadu Sanadi who acted as panch for the spot panchanama. P.W.3 is Shamrao Patil, the uncle of the deceased. P.W.4 is Ajit Patil, who was examined for motive i.e. previous quarrel between accused no.1 and the deceased. P.W.5 is Jagonda Patil, who was also examined to establish motive but had turned hostile. P.W.6 is Shrikant Korvi, who had turned hostile. P.W.7 is Lagonda

Patil, who has been examined as an eye witness to the incident of assault. P.W.8 is Dr. Appasaheb Dharmgupte, who attended the injured in KEM Hospital at Ichalkarangi. P.W.9 is Deelip Kambale, the Head Constable attached to Hatkalangale Police Station who registered the offence. P.W.10 is Head Constable Basappa Gawane, who was attached to the Police Chowky in the Mission Hospital at Miraj. He had drawn the inquest panchanama Exh.11 on the dead body. P.W.11 is Dr.Sanjay Bhave who conducted post mortem examination on the dead body. Lastly, P.W.12 is PSI Laxman Jadhav who investigated the case. The defence of the accused was of total denial.

4. After considering the entire evidence on record, the trial court acquitted both the respondents-accused by the impugned judgment and order dated 31/1/1996 which is under challenge in this appeal filed by the State.

5. We have gone through the entire evidence on record and heard both sides. It is not in doubt that the murder was committed of the deceased in the night when he was sleeping in the courtyard. Though other

three persons were also sleeping near him in the said courtyard, none of them was aware about the assault on the deceased. The only person who has been examined as an eye witness is P.W.7 Lagonda Patil. According to his evidence, on the night of the incident he had gone to his power loom premises at about 7.30 p.m. which is at a distance of one and half to two furlong from his house. After getting some work done at about 2.30 a.m. he came back to his residential house. When he reached near his house he sat for passing urine. When he got up, he saw both the accused coming with a big stone in their hands. His house is adjoining to the house of the deceased and the courtyard where they were sleeping. According to him he saw accused no.1 hitting a stone on the head and face of Ramesh and accused no.2 holding legs of Ramesh. Thereafter both of them ran away. He saw them in electric light. He saw bleeding from mouth, nostrils and ears of Ramesh. He went to the injured and saw him from close distance. According to him he did not accompany the persons who had taken injured Ramesh to the hospital. He has also admitted that he did not disclose the matter to the police as he knew that accused were goodas and, therefore, he was afraid

of them. What is important to note is that though he claims to be an eye witness his statement was recorded on 10/4/1994 i.e. after a period of 17 days after the date of incident. Even the accused, on the basis of motive, were arrested much earlier i.e. 30/3/1994. He has admitted that he had not told the police or anybody about the incident. In such circumstances we cannot find fault with the trial court in disbelieving this witness as being an eye witness to the incident.

5. If the evidence of eye witness is disbelieved, the only evidence is about motive led by the prosecution. In the initial report filed by the wife of the deceased there is no mention about the motive nor suspicion was there against these accused. She has mentioned about the motive in her supplementary statement which was filed on 22/6/1994 i.e. about three months after the incident. In any way, the wife of the deceased had no reason to suspect the accused on the basis of the quarrel between the deceased and accused no.1 which had taken place about two years before the incident. Even P.W.3 Shamrao Patil, who is uncle of the deceased and was sleeping on that night in the same courtyard, had not seen the assault on the

deceased. He has deposed only about the quarrel between accused no.1 and deceased Ramesh. He had not woken up at the time of the assault nor he had heard any commotion or noise when the deceased was being assaulted. According to him at about 2.30 a.m. he heard loud noise of snoring and, therefore, he woke up and found that it was the sound of Ramesh. He, therefore, awoke the other two persons Mhadgonda and Ajit who were sleeping in the same courtyard. He then saw that deceased had received bleeding injuries and, therefore, awoke Ramesh's wife and thereafter he took Ramesh to the KEM Hospital at Ichalkarangi.

6. The only circumstance about which the prosecution has led evidence is that of motive. No doubt the prosecution has attached the stone from the place of offence which was stained with blood of the group of the deceased. But seizure of the blood stained stone from the place of the incident cannot link the offence to the accused. If the evidence of alleged eye witness P.W.7 is discarded, there is no other circumstance established to connect the accused with the murder of Ramesh. The accused cannot be held guilty on the basis of motive alone due to the quarrel

between the deceased and the accused no.1, which had taken place about two years ago.

7. In the aforesaid circumstances, we cannot find fault in the reasoning or findings of the trial court. In the facts and circumstances of the case there could have been no other finding in this case except the one which the trial court has arrived at and resulted in acquittal of the respondents-accused.

8. In the result, the order of acquittal recorded against the respondents-accused by the Additional Sessions Judge, Kolhapur on 31/1/1996 in Sessions Case No.11 of 1995 is confirmed and appeal is dismissed. The bail bonds of respondents-accused shall stand cancelled.

(S.S. Parkar,J.)

(Anoop V. Mohta,J.)